

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1143 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ABDUL AZIZ GANAI FAKIR

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

Mr.A.B.Vyas, A.P.P. for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 06/10/97

ORAL JUDGEMENT

Heard. Mohmad Akbar, son of prisoner Abdul Aziz Ganai Fakir, is present before the Court. His address of Jammu Kashmir is Hai Hamma Mazhar, District Kupada in Kashmir. He is present before the Court pursuant to the orders passed by this Court on 17.9.1997 and 24.9.1997. He says that his uncle Huseinbhai Haxin Ganai, has been residing in a hut in the Bank of river Sabarmati,

out-side Shahpur Gate, Ahmedabad.

2. Although the prisoner is convicted of the offences punishable under the provisions of Narcotic Drugs & Psychotropic Substances Act, 1985, it has not been in dispute that he has been suffering from Cancer and that he is in the last stage of his ailment. He has already undergone sentence of nearly 9 years and 8 months and he is required to under-go sentence of nearly 2 years and 4 months.

3. Since he has been suffering from deadly disease which has spread over considerably, the prisoner has sought for his temporary release so as to enable him to be with the member/s of his family. One of his sons has been in Ahmedabad and is present before the Court, as stated above. A Full Bench of this Court has in Jyotiben Ramlal Purohit V/s. State of Gujarat & Anr., reported in 1996 (1) - 37(1) G.L.R. 395, (Para : 24) that in an appropriate case, the High Court, while exercising the powers under Article 226 to issue appropriate writ, direction or order in exceptional cases, may entertain the application and release the prisoner for temporary period.

It will be clear from what is stated above that this is clearly an exceptional case requiring exercise of power of this Court under Article 226 of the Constitution.

4. In the facts of the case, therefore, following direction is issued :

The prisoner (petitioner herein) shall be released temporarily for a period of 30 days on usual terms and conditions and/or the conditions that might be imposed by the concerned Jail Authority.

Rule made absolute in the aforesaid terms.

D.S.Permitted.

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